

NEIL MADDEN

Order (public reprimand) entered by the Board July 24, 2009.

SUMMARY¹

The respondent, Neil Madden, Esq., is an attorney duly admitted to the bar of the Commonwealth on December 22, 1992. In August of 2005, an existing client retained the respondent to represent him in connection with the sale of property in East Boston. The respondent agreed to hold the buyer's deposit in escrow pending the closing. The deposit was paid in two checks, of \$10,000 and \$5,000, both of which the respondent deposited to his IOLTA account. After making an agreed-upon disbursement to his client of \$1,900, the respondent should have been holding \$13,100 as the buyer's deposit. Unbeknownst to the respondent, however, the \$5,000 deposit check was returned for insufficient funds, as a result of which the respondent was in fact only holding a deposit of \$8,100.

From November of 2005 through at least December of 2007, the respondent failed to maintain the following account records required by Mass. R. Prof. C. 1.15(f):

- a) a check register showing in chronological order the date and amount of each deposit; the date, amount and payee of each disbursement; the identity of the client matter to which each deposit and disbursement pertained; and the balance after each deposit and disbursement;
- b) a chronological ledger for each client or third person for whom he received trust funds showing each related receipt and disbursement; the identity of the client matter for which each sum was deposited or disbursed; and the balance held for the client or third person;
- c) a chronological ledger for his funds deposited to the account to accommodate reasonably expected bank charges showing each deposit and expenditure of her funds and the balance remaining;
- d) reconciliation reports prepared at least every sixty days showing the required reconciliation of check register, individual ledgers, and bank statements;
- e) account documentation including all bank statements, canceled checks and other transaction records returned by the bank, and records of all deposits separately listing each deposited item and the client or third person for whom the deposit was made.

From November of 2005 through at least December of 2007, the respondent failed to promptly withdraw earned fees from his IOLTA account. The client's sale fell through in March 2006, and a dispute arose between the buyer and the seller over the escrow monies. The respondent filed a verified complaint in superior court, seeking a declaratory judgment from the court concerning the disbursement of escrow funds. He then wrote a check for \$13,100 from his

IOLTA to transfer the deposit into a separate escrow account. Because the respondent failed to maintain the account records and perform the reconciliations required by Mass. R. Prof. C. 1.15(f), he was still unaware that the \$5,000 check from the buyer had been returned for insufficient funds. However, no funds of other clients were misused when the transfer was made because the additional \$5,000 withdrawn from the IOLTA account was covered by the respondent's own funds in the account that he had not withdrawn. The dispute was subsequently settled and the respondent distributed the deposit funds as agreed by the parties.

By failing to maintain the required account documentation records, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(A)

By failing to maintain a trust account check register that recorded all deposits and records of disbursements and the current balance, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B).

By failing to maintain the required individual client records and subsidiary ledgers, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C).

By failing to prepare and retain reconciliation reports on a regular and periodic basis but no less frequently than every sixty day, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E).

By failing to retain reconciliation contemporaneous documentation and records of transactions, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(F).

By failing to promptly withdraw earned fees from his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. On July 14, 2009, the board voted to accept the parties' stipulation and to impose a public reprimand, on the conditions that the respondent comply with an accounting probation for two years and comply for six months with all recommendations and directives resulting from a full inspection and audit of his law office practices and procedures by LOMAP. The board's vote indicated that the board did not view its approval of the stipulation as precedent for the proposition that a public reprimand is the appropriate sanction for failure to comply with the record-keeping requirements.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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